



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUL 16 2013

Chantell Taylor, Esq.
Hovan Lovells US LLP
One Tabor Center, Suite 1500
1200 Seventeenth Street
Denver, CO 80202

RE: MUR 6621
The Broadmoor Hotel, Inc.

Dear Ms. Taylor:

On October 18, 2012, the Federal Election Commission notified your client, The Broadmoor Hotel, Inc. (the "Broadmoor"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint and information supplied by you, the Commission, on July 9, 2013, voted to dismiss the allegations as they pertain to the Broadmoor. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Under the Act, a corporation or its separated segregated fund ("SSF") is prohibited from soliciting contributions to the SSF from persons outside the corporation's restricted class — namely, the corporation's executive and administrative personnel and families of such personnel. 2 U.S.C. § 441b(b)(4)(A)(i); 11 C.F.R. § 114.5(g)(1). Furthermore, the Act and Commission regulations require that "any person" who solicits contributions to an SSF inform the employee or member of the political purpose of such fund and of his or her right to refuse to contribute without reprisal. 2 U.S.C. § 441b(b)(3)(B), (C); 11 C.F.R. §§ 114.1(i), 114.5(a)(3)-(5). The Commission cautions the Broadmoor to take steps to ensure that its conduct is in compliance with the Act and the Commission Regulations.

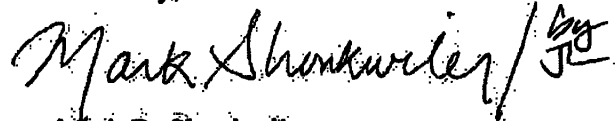
You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

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If you have any questions, please contact Jin Lee, the attorney assigned to this matter, at
(202) 694-1650.

Sincerely,



Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENT:** The Broadmoor Hotel, Inc.

MUR 6621

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7 **I. INTRODUCTION**

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9 This matter involves allegations that the American Hotel & Lodging Association Political
10 Action Committee ("HotelPAC" or the "Committee"), which is the separate segregated fund of
11 the American Hotel and Lodging Association ("AHLA"), improperly solicited individuals
12 outside of AHLA's or its members' restricted class and failed to inform contributors about its
13 political purpose in violation of the Federal Election Campaign Act, as amended (the "Act").

14 Complainant is a member of the Broadmoor Golf Club ("Golf Club" or "Club"), which is
15 a wholly owned operation of The Broadmoor Hotel, Inc. (the "Broadmoor"), a corporate member
16 of AHLA. The Complainant asserts that she and other Golf Club members were illegally
17 solicited to make contributions to the Committee when she and other Golf Club members were
18 invited to HotelPAC fundraisers in 2010 and 2011.

19 As discussed below, the Commission dismisses with caution the allegations that: (1) the
20 Broadmoor violated 2 U.S.C. § 441b(b)(4)(A)(i) and 11 C.F.R. § 114.5(g)(1) by soliciting
21 contributions outside of the restricted class; and (2) the Broadmoor violated 2 U.S.C.
22 § 441b(b)(3)(B) and (C) and 11 C.F.R. § 114.5(a)(3) and (4) by failing to inform individuals of
23 the political purpose of HotelPAC or the right to refuse to contribute without any reprisal.

24 **II. FACTUAL BACKGROUND**

25 AHLA is an incorporated trade association that represents the lodging industry. See
26 <http://www.ahla.com/content.aspx?id=3438>. HotelPAC, a committee registered with the
27 Commission, is the separate segregated fund ("SSF") of AHLA. See AHLA Statement of

1 Organization (Sept. 20, 2012). The Broadmoor is a hotel located in Colorado Springs, Colorado.
2 Broadmoor Resp. at 1 (Nov. 19, 2012). The Golf Club is a private country club with dues paying
3 members and is located on the same property as the Broadmoor. *Id.* The Broadmoor and the
4 Golf Club are not separate legal entities; the Broadmoor operates the Club as a department of the
5 hotel. Broadmoor Supp. Resp. at 1 (Dec. 12, 2012). The Broadmoor is a corporate member of
6 AHLA. Broadmoor Resp. at 2.

7 For over ten years, the Broadmoor has hosted an annual fundraiser for HotelPAC.
8 Broadmoor Resp. at 2. The Broadmoor worked closely with AHLA and AHLA's state partner to
9 plan the fundraisers, which consisted of a reception, dinner, and an auction. *Id.* According to the
10 Broadmoor, the branding of the events — that is, the trade logos and names displayed on
11 marketing materials at the events — featured only HotelPAC, not the hotel,¹ and HotelPAC was
12 the exclusive beneficiary; AHLA managed the event, while the Broadmoor provided its facilities,
13 food, and service. *Id.* (citing Decl. of Cindy Johnson ¶¶ 4, 7-8 (Oct. 25, 2012)). Attendees made
14 all payments and contributions directly to HotelPAC; the Broadmoor neither collected nor
15 bundled checks nor received payments or contributions. *Id.*

16 **A. HotelPAC Fundraisers**

17 **1. 2010 Fundraiser**

18 In 2010, the Broadmoor staff sought to increase attendance at the fundraiser. They
19 consulted with AHLA leadership, including its president and counsel, to determine whether Golf
20 Club members could be invited. Broadmoor Resp. at 2 (citing Johnson Decl. at ¶¶ 10-12; Decl.
21 of Michael Pastor-Clark ¶¶ 6-8 (Nov. 15, 2012)). According to the Broadmoor, AHLA

¹ We note, however, that the Broadmoor's logo appears in solicitation materials submitted with the Complaint and Broadmoor's Response. See, e.g., Compl., Ex. 1, 4; Broadmoor Resp., Ex. 5-8, 10.

1 concluded that the Broadmoor could invite Golf Club members so long as they agreed to become
2 members of AHLA. Broadmoor Resp. at 3 (citing Johnson Decl. ¶ 13; Pastor Clark Decl. ¶ 8;
3 Decl. of Maureen Carter ¶ 8 (Nov. 15, 2012)). On August 13, 2010, the Broadmoor invited Golf
4 Club members to attend the fundraiser. Compl., Ex. 1; Broadmoor Resp., Ex. 8. Broadmoor
5 staff signed the letters, printed on Broadmoor stationery, and enclosed a registration form drafted
6 by AHLA. Compl., Ex. 1; Broadmoor Resp., Ex. 8. The fundraiser cost \$50 per person.
7 Compl., Ex. 1; Broadmoor Resp., Ex. 8. After arriving at the fundraiser, Club members were
8 required to complete an AHLA membership form and become complimentary members of
9 AHLA for three months. Broadmoor Resp. at 3 (citing Carter Decl. ¶ 10). The Broadmoor
10 claims that it followed AHLA's instructions precisely. Broadmoor Resp. at 1, 3.

11 2. 2011 Fundraiser

12 In 2011, the Broadmoor and AHLA again wished to invite Golf Club members to the
13 annual fundraiser. Broadmoor Resp. at 3 (citing Johnson Decl. ¶ 15). To comply with
14 Commission regulations, AHLA reasoned that the Broadmoor could invite Golf Club members
15 to the event if the invitees joined AHLA — thus making them members of AHLA's restricted
16 class. Broadmoor Resp. at 3. AHLA provided the Broadmoor with a notice to distribute to Club
17 members, inviting them to join AHLA for one year for a discounted fee. Compl., Ex. 6.

18 The Broadmoor emailed the notice to Golf Club members on August 3, 2011. Compl.,
19 Ex. 6. The same day, the Broadmoor separately sent Golf Club members an invitation for the
20 August 8, 2011, fundraiser. Compl., Ex. 4; Broadmoor Resp., Ex. 10. This invitation was
21 similar to the one sent in 2010, but in 2011 attendance at the reception and dinner would be free.
22 *Id.* In a separate email, also sent August 3, 2011, the Broadmoor made express that Club
23 Members must become AHLA members, for an annual fee of \$25, to attend the event: "The

reception and dinner are complimentary, but attendees must be members of the [AHLA] (this will explain the previous email regarding [AHLA]).” Compl., Ex. 7.

3. 2012 Fundraiser

On July 28, 2012, the Broadmoor again invited Golf Club members to the annual HotelPAC fundraiser. Compl., Ex. 10. After notice and receipt of the Complaint, however, the Broadmoor and AHLA withdrew the invitation to Golf Club members. Broadmoor Resp. at 4, Ex. 11.

III. LEGAL ANALYSIS

A. Solicitations Outside the Restricted Class

The Act permits corporations to establish political committees known as separate segregated funds or “SSFs.” See 2 U.S.C. §§ 441b(b)(2)(C); 431(4)(B). The Act, however, prohibits a corporation or its SSF from soliciting contributions to the SSF from persons outside the corporation’s restricted class — namely, the corporation’s executive and administrative personnel and families of such personnel. *Id.* § 441b(b)(4)(A)(i); 11 C.F.R. § 114.5(g)(1). Subject to certain conditions, a membership organization may solicit its corporate and non-corporate members directly. 2 U.S.C. § 441b(b)(4)(D); 11 C.F.R. §§ 114.7(c), 114.8(c)(i). A trade association and its SSF may solicit the stockholders and the executive and administrative personnel of a member corporation, provided that the member corporation separately and specifically approves the solicitation, and the member corporation does not approve a solicitation by any other trade association during the calendar year.² 2 U.S.C. § 441b(b)(4)(D); 11 C.F.R. § 114.8(c), (d). Commission regulations also contemplate that the member corporation may

² See 11 C.F.R. § 114.1(e)(1) (defining membership organization); 11 C.F.R. § 114.1(e)(2) (defining member of a membership organization); 11 C.F.R. § 114.8 (defining trade association); *see also* Advisory Op. 2012-15 (Am. Physical Therapy Assoc.) at 7, n.9 (explaining that a trade association that is also a membership organization may solicit non-corporate members).

1 solicit contributions to the trade association's SSF. *See* 11 C.F.R. § 114.8(d)(1). Finally,
2 Commission regulations provide that an "[a]ccidental or inadvertent solicitation" of persons
3 outside a restricted class "will not be deemed a violation," if a corporation or SSF "used best
4 efforts to comply with the limitations regarding the persons it may solicit and that the method of
5 solicitation is corrected forthwith after the discovery of such erroneous solicitation." 11 C.F.R.
6 § 114.5(h).

7 Here, because the Broadmoor is a member of the AHLA, the Act and Commission
8 regulations permitted AHLA, HotelPAC, and the Broadmoor to solicit the Broadmoor's
9 executive and administrative personnel. But because the Broadmoor is a corporation with capital
10 stock — and thus not a membership organization under 11 C.F.R. § 114.7 — individuals who
11 paid dues to the Golf Club were not within the Broadmoor's restricted class. *See* Broadmoor
12 Supp. Resp. at 1.³

13 Upon receipt of the Complaint, AHLA, HotelPAC, and the Broadmoor agreed to
14 withdraw the Golf Club members' invitations to the 2012 fundraiser. There is also no indication
15 that contributions were made as a result of that withdrawn solicitation.

16 The Broadmoor has provided substantial evidence that it relied on AHLA and HotelPAC
17 for guidance in complying with the Act and Commission regulations. *See* Broadmoor Resp.,
18 Exs. 1-10. Under these circumstances, dismissal as to the Broadmoor is a justified exercise of
19 prosecutorial discretion. *See Heckler v. Chaney*, 470 U.S. 821 (1985). Accordingly, the
20 Commission dismisses with caution the allegation that the Broadmoor violated 2 U.S.C.
21 § 441b(b)(4)(A)(i) and 11 C.F.R. § 114.5(g)(1).

³ There is no indication — and the Broadmoor does not assert — that any of the Golf Club members were also executive and administrative personnel of the hotel, or their families.

B. Failure to Include Notices Regarding Voluntary Contributions in Solicitations

To ensure that contributions solicited for an SSF are voluntary, the Act and Commission regulations require that “any person” who solicits contributions to an SSF inform the employee or member of the political purpose of such fund and of his or her right to refuse to contribute without reprisal. *See* 2 U.S.C. § 441b(b)(3)(B), (C); 11 C.F.R. §§ 114.1(i), 114.5(a)(3)–(5); *see also* Advisory Op. 2006-17 (Berkeley) at 5. The Commission has applied this requirement to membership organizations, including trade associations. *See, e.g.*, MUR 5681 (High Point Reg'l Ass'n of Realtors) (membership organization failed to include required notices in solicitations); Advisory Op. 1985-12 (Am. Health Care Ass'n PAC) (solicitation of trade association's members must meet requirements of 11 C.F.R. § 114.5(a)).

Because the same reasons for dismissing the allegation concerning solicitations outside the restricted class apply here, the Commission dismisses with caution the allegation that the Broadmoor violated 2 U.S.C. § 441b(b)(3)(B), (C) and 11 C.F.R. § 114.5(a).